

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MVD SPECIALISTS, LLC,

Appellant,

v.

CV 07-1089 WJ/WPL

NICOLAE SGAVERDEA,

Appellee.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter is before the Court on Appellant's Objection to the Magistrate Judge's Proposed Findings and Recommended Disposition.

Appellant's only specific complaint concerns the magistrate judge's conclusion that its arguments involving 11 U.S.C. § 365 were not preserved. Appellant contends that § 365 was the bankruptcy court's sole source of authority for allowing assumption and assignment of the lease at issue in this appeal. Therefore, according to Appellant, "[a]lthough this statutory section may not have been mentioned by name below, by definition these issues were considered and ruled upon" (Objection at 1.) Appellant also asserts without supporting argument or authority that its "arguments [regarding § 365] are jurisdictional." (*Id.*)

Appellant did not simply fail to invoke § 365 by name in the bankruptcy court. It failed to make any of the arguments identified by the magistrate judge as unpreserved. There is no support for Appellant's assertion that these arguments are jurisdictional. Accordingly, the magistrate judge correctly determined that the issues were not preserved.

In addition to its specific complaint regarding preservation of its arguments under § 365,

Appellant attempts to incorporate by reference all of the arguments in its opening brief and reply brief. This is insufficient to trigger a duty to review any particular issues. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996) (“[W]e hold that a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.”); *see also Davis v. Astrue*, 237 F. App’x 339, 342 (10th Cir. 2007) (holding that objection in which appellant stated that he “re-alleges all issues of Opening Brief” and incorporated the brief by reference was insufficient). Nevertheless, I have conducted a de novo review and have found no error in the magistrate judge’s analysis.

IT IS THEREFORE ORDERED THAT:

- 1) the Magistrate Judge’s Proposed Findings and Recommended Disposition are adopted by the Court;
- 2) the bankruptcy court’s orders are affirmed;
- 3) Appellant’s motion to supplement the record is denied as moot; and
- 4) this proceeding is dismissed with prejudice.


UNITED STATES DISTRICT JUDGE